

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Final Rule to Delist the Dusky Seaside Sparrow and Remove its Critical Habitat Designation**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: The Service removes the dusky seaside sparrow (*Ammodramus maritimus nigrescens*) from the List of Endangered and Threatened Wildlife and also removes its critical habitat designation. All available information indicates that this bird is extinct. The dusky seaside sparrow is known to have occurred only on Merritt Island and the upper St. Johns River marshes of Brevard County, Florida. It has been extirpated by the conversion of salt marshes to mosquito impoundments and by drainage, land use changes, and unsuitable fire regimes. This action removes the protection of the Endangered Species Act from the dusky seaside sparrow and its critical habitat.

EFFECTIVE DATES: January 11, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor, at the above address (904/791-2580; FTS 946-2580).

SUPPLEMENTARY INFORMATION:**Background**

The dusky seaside sparrow was described by Ridgway in 1873, as *Ammodromus maritimus* var. *nigrescens* (Baird and Ridgway 1873). The bird had been discovered by Charles Maynard in 1872 and described by him in 1875, but Ridgway's description preceded Maynard's. The species was subsequently transferred to the genus *Ammodramus*. It was retained as a full species until 1973, when it was reduced to subspecific status under the seaside sparrow, *Ammodramus maritimus*

(American Ornithologists' Union 1973). In 1982, seaside sparrows were placed in the genus *Ammodramus* (American Ornithologists' Union 1982).

The dusky seaside sparrow is distinguished from other subspecies of the seaside sparrow by its dark coloration and by characteristics of its song (McDonald 1988). Avise and Nelson (1989) found that the mitochondrial DNA of the dusky seaside sparrow was virtually indistinguishable from other Atlantic coast populations of *Ammodramus maritimus*, and implied that the subspecific status of the subspecies was not merited. McDonald (1988), however, supported the validity of the taxon and the dusky seaside sparrow is expected to continue to be recognized as a valid subspecies in the next American Ornithologists' Union check-list.

The subspecies has never been found outside its limited range of cordgrass (*Spartina bakeri*) marshes on Merritt Island and the adjacent St. Johns River basin in Brevard County, Florida. Historically, the dusky seaside sparrow occurred in marshes along the Indian River on the northwest coast of Merritt Island from the Moore Creek-Banana Creek area to Dimmit Creek; and on the mainland in marshes on the east side of the St. Johns River from just south of Salt Lake south to the vicinity of Cocoa. The mainland range was entirely confined to areas between State Routes 46 and 520, within a 10-mile radius of Titusville.

Howell (1932) considered dusky seaside sparrows to be common throughout their range on Merritt Island, but less common in the St. Johns River Basin. Trost (1968) reported that the construction of mosquito control impoundments, beginning in 1956, caused the tidal salt marsh vegetation to change to fresh water species. He believed that these alterations had resulted in a marked population decline in the dusky seaside sparrow. He also stated that the field notes of D.J. Nicholson reported an estimated 70 percent decline in populations from 1942 to 1953, following widespread use of DDT for mosquito control on Merritt Island.

Service actions concerning the dusky seaside sparrow began with its listing as an endangered species, pursuant to the Endangered Species Preservation Act of 1966. This listing was published in the Federal Register on March 11, 1967 (32 FR 4001). This listing was maintained under the Endangered Species Act of 1973, as amended.

Merritt Island National Wildlife Refuge was established in 1963, and

efforts were made to restore one of the mosquito impoundments to salt marsh (Sykes 1980). A notice of intent to determine critical habitat for the dusky seaside sparrow was published May 16, 1975 (40 FR 21499). Critical habitat was proposed for the bird on December 3, 1976 (41 FR 53074) and was designated on September 22, 1977 (42 FR 47840). Subsequently, much of the critical habitat in the St. Johns River marshes was acquired as the St. Johns National Wildlife Refuge. Despite these conservation efforts, dusky seaside sparrow populations continued to decline as salt marsh vegetation deteriorated.

Sharp (1970a) estimated that 2,000 pairs had originally occurred on Merritt Island, but if Nicholson's (in Trost 1968) estimate of a 70 percent reduction was accurate, only about 600 pairs were left by 1957. Sharp also quotes an estimate by Trost of 70 pairs in 1961–1963. Sharp's (1970a) 1968 spring survey found only 33–34 singing males remaining on Merritt Island. Subsequent surveys (Sykes 1980) found the following numbers of singing males on Merritt Island: 1969, 30; 1970, 18; 1971, 8; 1972, 11; 1973–1975, 2 each year; 1976, none; 1977, 2. No dusky seaside sparrows were found on Merritt Island after 1977.

The earliest available population estimate of the dusky seaside sparrow for the St. Johns River marshes is Sharp's (1970a) 1968 figure of 894 singing males. Sharp subsequently (1970b) found 143 singing dusky seaside sparrows on the proposed St. Johns National Wildlife Refuge lands in 1970. Baker (1978) reported a continuing decline in singing male surveys in the St. Johns River marshes: 1972, 110; 1973, 54; 1974, 37; 1975, 47; 1976, 11; 1977, 28; 1978, 24; 1979, 13. An extensive survey effort in 1980 (Delany et al. 1981) found only four singing males; no dusky seaside sparrows were found in 1981 (Delany et al. 1981).

Three male birds were taken into captivity in 1979, and three more in 1980, to begin a captive breeding program. The Service, the Florida Game and Fresh Water Fish Commission, the Florida State Museum (now the Florida Museum of Natural History), the Florida Audubon Society, the Santa Fe Community College Teaching Zoo, and the Walt Disney World Discovery Island were involved in the project at various points. When it became apparent that no female dusky seaside sparrows were likely to be found, some work was done crossing the dusky males with females of Scott's seaside sparrow (*Ammodramus maritimus peninsulae*), a subspecies found on the west coast of

Florida; several birds were produced as the result of crosses and subsequent backcrosses. In 1982, however, the Service decided that because such hybrid offspring were not listed under the Endangered Species Act, such progeny should not be released on the refuge. However, the Service agreed to give custody of the birds to another party. The ultimate custodian of the male dusksies and their offspring was Discovery World, assisted by the Florida Audubon Society. The advanced age of the captive dusky males resulted in difficulties with the cross breeding program, and the last dusky male died of natural causes on June 16, 1987. All offspring also died or were lost by accident by the summer of 1989.

Following the death of the last captive dusky seaside sparrow in 1987, representatives of the Service, the Florida Game and Fresh Water Fish Commission, and the Florida Audubon society agreed that it would be appropriate to carry out another survey for the dusky seaside sparrow prior to a proposal to delist the bird. Accordingly, participants from the above organizations carried out a survey in the spring of 1989 (Bentzien 1989). Suitable habitat for the bird appeared to have decreased greatly since the 1980–1981 surveys, and no dusky seaside sparrows were detected.

The decline of the birds in the St. Johns National Wildlife Refuge and in adjacent marshes was due to drainage, highway construction, burning of marshes to improve pasture, and wildfire. Wildfires were particularly severe in 1973 and in 1975–1976. Although fire is a natural feature in the St. Johns marshes, the lowered water tables and deliberate man-caused burns in the already fragmented habitat meant that the dusky seaside sparrow had very little available habitat following extensive burning.

On June 21, 1990 (55 FR 25588), the Service proposed to delist the dusky seaside sparrow and to remove its critical habitat designation.

Summary of Comments and Recommendations

In the June 21, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, required by section 4(b)(5)(D) of the Act, were published in the Melbourne, Florida, Florida Today on

May 12, 1990, and the Orlando Sentinel on May 13, 1990. Only one comment was received: The Florida Game and Fresh Water Fish Commission stated that it concurred with the rationale for delisting the dusky seaside sparrow, and did not oppose that action.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that the dusky seaside sparrow should be removed from the List of Endangered Species and that its critical habitat designation should be removed. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more factors described in section 4(a)(1). These factors and their application to the dusky seaside sparrow (*Ammodramus maritimus nigrescens*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The dusky seaside sparrow was known to occur only in a small area near Titusville, Brevard County, Florida. The marsh habitat to which this bird was restricted has been destroyed or modified by flooding marshes for mosquito control, and by drainage, development, and fire. The dusky seaside sparrow is believed to be extinct.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Not applicable.

C. Disease or predation. Not applicable.

D. The inadequacy of existing regulatory mechanisms. Not applicable.

E. Other natural or manmade factors affecting its existence. The last captive dusky seaside sparrow died on June 16, 1987.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if: (1) It becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes that enough evidence exists to declare the dusky seaside sparrow extinct.

Effect of Rules

This final rule removes the dusky seaside sparrow from the List of Endangered and Threatened Wildlife, and removes its critical habitat designation. Federal agencies no longer need to consult with the Secretary to insure that any action authorized,

funded, or carried out by such agency is not likely to jeopardize the continued existence of the dusky seaside sparrow or adversely modify its critical habitat. Federal restrictions on taking of this species no longer apply. The Service's Division of Wildlife Resources will reevaluate management options for the St. Johns National Wildlife Refuge.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (49 FR 49244).

References Cited

- American Ornithologists' Union. 1973. Thirty-second supplement to the American Ornithologists' Union check-list of North American Birds. *Auk* 90:411-419.
- American Ornithologists' Union. 1982. Thirty-fourth supplement to the American Ornithologists' Union check-list of North American Birds. Supplement to *Auk* 99(3):1cc-16cc.
- Awise, J.C., and W.S. Nelson. 1989. Molecular genetic relationships of the extinct dusky seaside sparrow. *Science* 243:646-648.
- Baird, S.F. and R. Ridgway. 1873. On some new forms of American birds. *Bull. Essex Inst. (Salem, Mass.)* 5(12):197-210.

Baker, J.L. 1978. Status of the dusky seaside sparrow. Georgia Dept. Nat. Res. Tech. Bull., pp. 94-99.

Bentzien, M.M. 1989. 1989 dusky seaside sparrow survey. Jacksonville Field Office, U.S. Fish and Wildlife Service. 5 pp.

Delany, M.F., W.P. Leenhouts, B. Sauselein, and H.W. Kale II. 1981. The 1980 dusky seaside sparrow survey. Florida Field Nat. 9(4):64-67.

Howell, A.H. 1932. Florida bird life. Florida Dept. Game and Fresh Water Fish. Coward-McCann, Inc. New York. 579 pp.

Maynard, C.J. 1875. A new species of finch from Florida. *Amer. Sportsman* 5:248.

McDonald, M.V. 1988. Status survey of two Florida seaside sparrows and taxonomic review of the seaside sparrow assemblage. Florida Coop. Fish and Wildl. Res. Unit, Univ. Florida Tech. Rep. 32. 138 pp.

Sharp, B. 1970a. A population estimate of the dusky seaside sparrow. *Wilson Bull.* 82:158-166.

Sharp, B. 1970b. A census of the dusky seaside sparrow on the proposed St. Johns National Wildlife Refuge. Unpublished report to U.S. Fish and Wildlife Serv. Bird Banding Laboratory, Laurel, Maryland.

Sykes, P.W., Jr. 1980. Decline and disappearance of the dusky seaside sparrow from Merritt Island, Florida. *Amer. Birds* 34(5):728-737.

Trost, C.H. 1968. Dusky seaside sparrow. Pp. 849-859 in O.L. Austin, ed., Life histories of North American cardinals, grosbeaks, buntings, towhees, finches, sparrows, and allies. U.S. Nat. Mus. Bull. 237 Washington, D.C. 1,889 pp.

Author

The primary author of this final rule is Dr. Michael M. Bentzien (see ADDRESSES section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Amend § 17.11(h) by removing the entry for the "Sparrow, dusky seaside * * * *Ammordramus* (= *Ammospiza*) *maritimus nigrescens*" under BIRDS from the List of Endangered and Threatened Wildlife.

§ 17.95 [Amended]

3. Amend § 17.95(b) for animals by removing the critical habitat entry for the dusky seaside sparrow (*Ammospiza maritima nigrescens*).

Dated: October 14, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.
[FR Doc. 90-29096 Filed 12-11-90; 8:45 am]

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